



# CHEROKEE NATION®

P.O. Box 948 • Tahlequah, OK 74465-0948 • (918) 453-5000

**O'irG.I**  
Chad "Cornassel" Smith  
Principal Chief

**JLGG JLhC**  
Joe Grayson, Jr.  
Deputy Principal Chief

November 15<sup>th</sup> 2006

Phil N. Hogan, Chairman  
National Indian Gaming Commission  
1411 L Street, NW  
Suite 9100  
Washington, D.C. 20005

Re: Proposed Class II Definitions and Classification Standards

Dear Chairman Hogan,

As Principal Chief of the Cherokee Nation, I am writing to discuss the adverse impact of the National Indian Gaming Commission (NIGC) proposed Class II Game Classification Standards and the proposed change to the definition for Electronic and Electromechanical Facsimile.

After careful review, it is apparent the proposed rules and change to the definition go far beyond what Congress intended when it drafted the Indian Gaming Regulatory Act. Congress envisioned the use of technology, especially that which broadens participation among players, to the maximum extent possible. As proposed, the rules and definition change will severely limit the use of the technology that Congress so clearly intended.

There is no game in existence in the Class II gaming industry that would be able to stand up to the proposed standards. In fact, even those games which received favorable advisory opinions from the NIGC's own General Counsel Office and those deemed by numerous federal courts as meeting the statutory requirements of a Class II game, could not withstand a challenge under the proposed rule. In effect, the Cherokee Nation would be forced to immediately shut down all 2,165 Class II games (according to a count as of September 2006). On average, Class II game removals/installations occur 4 to 5 times per year, as needed. An immediate removal of every single game would be devastating to the efficient operation of our facilities. With no Class II game alternatives available, the gaming facilities would either have to wait for the manufacturers to redesign games to be compliant with the new regulations (a process that could take up to one year or more) or remove them and replace them with new Compact games. The Cherokee Nation would thus be in the position to replace the games with Compact games, which would subsequently require a renegotiated compact with the State of Oklahoma.

It was the success of Class II gaming operations that enabled the Cherokee Nation and other Oklahoma tribes to effectively negotiate a Class III compact with the state. When it is time to

NOV 15 2006  
NATIONAL INDIAN GAMING COMMISSION  
RECEIVED

renegotiate these compacts, the negotiating position of the tribes will be severely weakened if the proposed rules are adopted. Even worse, for tribes that do not yet have compacts and Class II gaming is the only option, the results would be catastrophic.

The proposed standards are arbitrary and are not founded in statute or in case law. The NIGC proposal seeks to overturn several court decisions upholding Tribal positions on Class II game classifications, cases that NIGC considers wrongly decided.

The Cherokee Nation continues to pursue development opportunities based on the opinions of the NIGC and the language in case law. The Nation's efforts to become economically self-reliant and our efforts to provide revenues to meet the needs of our people have benefited greatly from Class II gaming. If enacted, the proposed rules would have a substantially negative effect on the tribe's continuing economic development efforts.

The Cherokee Nation's gaming facilities, which employ over 3,000 people, the majority of which are tribal members or members of other tribes, have been able to produce revenues that allow the tribe to allocate resources in areas of the most need for our tribal members. The funds generated by Class II games— which are distributed in the form of services such as scholarships, roads, bridges, health care, and local governmental services, such as fire fighting, law enforcement, and EMS – would be significantly reduced, if not completely eliminated under the proposed rule. While no current Class II specific revenue data is available because electronic games revenues are now consolidated, Cherokee Nation Enterprises (CNE) reported in October 2004 (which is prior to the introduction of Class III games) a gross net profit of \$16 million for the month (net income was \$4.4 million). This number gives an idea as to how much revenue can potentially be erased. If the proposed rule stands, Cherokee Nation would have to scale back needed services, which would decelerate the progress we have made in the areas of self-governance, self-help and economic self-sufficiency for our tribal citizens.

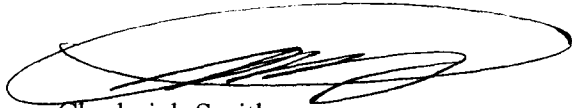
Additionally, Cherokee Nation's gaming facilities provide economic opportunities for other non-tribal businesses located near or in our tribal gaming facilities. Changing the rules in the middle of operations, after so much time, energy and resources have been utilized in structuring business within the given framework is unfair, not only to Cherokee Nation and its business ventures, but to non-Indian businesses which rely on our success for theirs. In speaking of the businesses that exist within our gaming facilities, an estimated \$10 million is paid out to non-gaming vendors each month. At last review, the funds distributed by CNE in the form of payroll and vendor payments "rolls over" 4 times in the local economy making an estimated \$720 million impact on the local economy; this equates to approximately \$180 million per year. This does not include the additional funds generated for non-tribal business located near gaming facilities that rely on our success to produce the increased foot traffic that currently exists.

These proposed rules are unnecessary and should be significantly revised to reduce new layers of federal bureaucracy. They violate states' rights, and undercut the constitutional principle of "sovereign-to-sovereign" relations with Indian tribes. Economic development and employment are essential to all our communities, particularly in Oklahoma, Indian and non-Indian. I strongly encourage you to reconsider proceeding with the proposed classification standards and definition

change and recommend further work be done with tribes to develop regulations that more accurately reflect the intent of the Indian Gaming Regulatory Act.

Please contact Paula Ragsdale in the Cherokee Nation Washington D.C. office should you need additional information or should you have any questions at (202) 393-7007.

Sincerely,

A handwritten signature in black ink, appearing to read "Chadwick Smith", is enclosed within a large, hand-drawn oval.

Chadwick Smith  
Principal Chief